

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ATS TREE SERVICES, LLC,

Plaintiff,

v.

FEDERAL TRADE COMMISSION,

Defendant.

Civil Action No.2:24-cv-01743

**UNOPPOSED MOTION OF *AMICI CURIAE* NATIONAL RETAIL FEDERATION,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL
CENTER, INC., INTERNATIONAL FRANCHISE ASSOCIATION, ASSOCIATED
BUILDERS AND CONTRACTORS, INC., AMERICAN HOTEL & LODGING
ASSOCIATION, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS,
INDEPENDENT ELECTRICAL CONTRACTORS, CONSUMER TECHNOLOGY
ASSOCIATION, UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS, THE
HOME CARE ASSOCIATION OF AMERICA, AND THE RESTAURANT LAW CENTER
(THE “*AMICI*”) IN SUPPORT OF PLAINTIFF’S MOTION FOR STAY OF EFFECTIVE
DATE AND PRELIMINARY INJUNCTION (THE “MOTION”), ECF NO. 10**

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**pro hac vice* motions forthcoming

Counsel for *Amici Curiae*

UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS BRIEF

Amici curiae, the National Retail Federation, the National Federation of Independent Business Small Business Legal Center, Inc., the International Franchise Association, the Associated Builders and Contractors, Inc., the American Hotel & Lodging Association, the National Association of Wholesaler-Distributors, the Independent Electrical Contractors, Consumer Technology Association, the United States Council for International Business, the Home Care Association of America, and the Restaurant Law Center (collectively, the “*amici*”) respectfully submit this unopposed motion for leave to file a brief in support of Plaintiff’s Motion for Stay of the Effective Date and Preliminary Injunction, ECF No. 10 (the “Motion”).

The eleven *amici* represent thousands of companies that collectively employ tens of millions of employees at all levels across virtually every facet of the U.S. economy. Their interest in the outcome of the litigation is that most of their members would qualify as “employers” under the Final Rule and the Final Rule would upend their contractual relations with their workforces.

“The extent, if any, to which an *amicus curiae* should be permitted to participate in a pending action is solely within the broad discretion of the district court.” *Waste Mgmt. of Pennsylvania, Inc. v. City of New York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995) (collecting cases). “Although a district court has inherent power to appoint *amici*, there is no specific statute or rule that so provides,” and so district courts may be “guided by Rule 29 of the Federal Rules of Appellate Procedure.” *Martinez v. Cap. Cities/ABC-WPVI*, 909 F. Supp. 283, 286 (E.D. Pa. 1995). Under Rule 29, private parties “may file a brief only by leave of court *or if the brief states that all parties have consented to its filing[.]*” Fed. R. App. P. 29(a)(2) (emphasis added). **Counsel for the Parties have stated that they consent to *amici* filing the proposed brief.**

Amici respectfully submit that the proposed brief will be helpful to the Court in resolving the pending motion. These *amici* represent industries in which narrowly tailored noncompete agreements, used appropriately, are critical to protect valuable trade secrets, customer relationships, and other workforce investments such that the Final Rule poses a critical threat to those industries. Moreover, the proposed brief will not cause any delay in the proceedings, nor will it prejudice any party, as confirmed by all Parties' consent to the filing.

CONCLUSION

For these reasons, *amici curiae* ask the Court to grant leave to file the attached brief in support of Plaintiff's Motion.

Dated: June 3, 2024

Respectfully submitted,

/s/ Carolyn O. Boucek

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Counsel for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I hereby certify the foregoing complies with the Judicial Policies and Procedures for cases assigned to District Judge Kelley B. Hodge and that foregoing is typed in 12-point Time New Roman font with one-inch margins

Date: June 3, 2024

/s/ Carolyn O. Boucek

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